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WHY SHOULD WE CHANGE OUR FORM
OF GOVERNMENT?

ADDRESS

BY

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IN THE CITY OF NEW YORK

BEFORE THE COMMERCIAL CLUB OF ST. LOUIS

NOVEMBER 27, 1911



PRESENTED BY MR. SUTHERLAND
JANUARY 3, 1912.—Ordered to be printed.

WASHINGTON

1912

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WHY SHOULD WE CHANGE OUR FORM OF GOVERNMENT?

MR. PRESIDENT AND GENTLEMEN: It is a sincere pleasure to find myself back again in St. Louis and privileged to speak to the members of this club. You will forgive me for saying that in the presence of so many old and valued friends I feel very much at home.

In response to the invitation of your committee, I have ventured to suggest a rather serious subject for discussion. It is one which does not easily lend itself to flights of after-dinner oratory or to that flow of wit and humor which we all so much enjoy. I have selected this serious subject because I know that this club is composed of thoughtful and reflective men, of men who busy themselves with matters of high import in the life of our Nation; and it is my strong belief that the question which I venture to put is one which every intelligent American ought to be asking himself at this time: Why should we change our form of government?

We have been reminded of late that it is a full half century since the beginning of that outbreak which threatened the existence of our Nation as it had been built by the fathers. As we look back now, at least those of us who are too young to have participated in that mighty struggle, who are too young to have known of it save by hearsay, we can see and understand that the American Civil War was an attack made upon the Government of the United States by strong and determined men animated by what they seriously believed to be sound principle and deep conviction. They made their appeal to the supreme tribunal of physical force, and they lost their cause. To-day every American is glad that that cause, however splendid, was lost, and that the Government founded by the fathers was perpetuated, let us hope for all time.

But now in the short interval of a generation since that great struggle closed there is underway a persistent, determined, and highly intelligent attempt to change our form of government. This attempt is making while we are speaking about it. It presents itself in many persuasive and seductive forms. It uses attractive formulas to which men like to give adhesion; but if it is successful it will bring to an end the form of government that was founded when our Constitution was made and that we and our fathers and our grandfathers have known and gloried in.

To put the matter bluntly, there is under way in the United States at the present time a definite and determined movement to change our representative Republic into a socialistic democracy. That attempt, carried on by men of conviction, men of sincerity, men of honest purpose, men of patriotism, as they conceive patriotism, is the most impressive political factor in our public life of to-day. In my judgment it transcends all possible differences between the historic

parties; it takes precedence of all problems of a business, a financial, or an economic character, however pressing, for it strikes at the very root of the Government of the United States and the principles upon which that Government rests. It strikes at the very root of the institutions that we call Anglo Saxon, and it proclaims a failure that great movement for the establishment of liberty under law, controlled and carried on through the institutions of representative government, a movement which had its origin more than 2,000 years ago in the forests of Germany, and which has persisted with constantly growing force and power throughout the history of the English-speaking peoples down to our own day. We are now told that representative government has failed. We are now told that the people are either incompetent or unable to choose representatives who will really serve their highest interests and who will be beyond the reach of the temptation offered by money or power or place. The remedy is said to be to appeal over the heads of the people's chosen representatives to the people themselves.

Let us look for a moment at this proposal and try to understand what it means. I have written down here a sentence or two from the pen of James Madison. When Madison made his contributions to the *Federalist* he wrote in one place:

In a democracy the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents.

A little later on he wrote:

A republic is a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.

It is clear, therefore, even if these passages from Madison were the only evidence, that the founders of our Government knew and had studied the difference between a representative republic and a direct democracy.

I suppose that never in the history of the world, before or since, has there been displayed so much insight into the principles of government, so much knowledge of the theory and practical workings of the different forms of government, as that which accompanied the formulation and adoption of the Constitution of the United States. Truly, there were giants in those days; and whether we take one view of the meaning of that great document or another makes no difference. The making of the American Constitution was a stupendous achievement of men who through reading, through reflection, through insight, and through practical experience, had fully grasped the significance of the huge task to which they devoted themselves, and who accomplished that task in a way that has excited the admiration of the civilized world. Those men built a representative republic; they knew the history of other forms of government; they knew what had happened in Greece, in Rome, in Venice, and in Florence; they knew what had happened in the history of the making of the modern nations that occupied the continent of Europe. Knowing all this they deliberately, after the most elaborate debate and discussion both of principles and details, produced the result with which we are so familiar.

Let us not suppose, however, even for a moment that that great enterprise had no genesis, no history.

When half-civilized man began to take account of his public concerns, he was controlled by a single leader, military in character and in method. That leader was at once executive, lawmaker, and judge. You may read to-day, if you will, in some of the great museums of the world, the laws of ancient oriental peoples carved on stone, and bearing the names of the monarchs who passed them by their edicts. You may, if you choose, review the entire history of the early European forms of government, and you may take note how the emphasis is laid now upon one element of public life, now upon another. At one moment it was the legislature which was exalted, at another it was the executive, at still another it was the military leader. You may see, if you will, the building up of a great world empire under the leadership of Rome; you may watch the breakdown of that Empire, due to forces working in part from within and in part from without; you may see one form after another of absolutism grasping the reins of government over intelligent peoples, longing for a chance to develop trade and commerce; and if you can visualize the map of Europe while all this is going on, you will see on it two bright particular shining spots. The one spot is little Holland, and the other is England. Those two bright spots mark the places where the principles of representative government, based upon the intelligent action of a free people, were at work, and they are the two sources from which our modern world has learned all its great lessons of civil and religious liberty. It was Holland which provided a resting place for the strong men who were sent to find their way across the Atlantic to the shores of Massachusetts Bay. It was England which had developed parliamentary representative institutions to the greatest perfection. From England we learned these lessons, and they have grown long and deeply into the life and thought of the American people. In our great Federal Republic these lessons have been applied, and the principle of representative institutions has been worked out on a scale and with a magnitude that are without parallel in the history of political action.

The governmental changes which are now proposed to the American people are not brought forward as philosophic propositions to be examined and passed upon in principle; they are not brought forward as a complete and conscious program to be debated and discussed by bodies like this, to be compared with the results of the experience and the activities of the past 125 years. These changes are presented to us as specific proposals to be passed upon now here, now there, in the light not of principle but of temporary expediency. In the name of reform or of progress we are asked to give our assent now to this specific proposal, now to that. But, these specific proposals, when taken altogether, when regarded collectively, constitute an invitation to surrender our representative Republic and to build upon the place where it once stood the structure of a socialistic democracy.

It may be, perhaps, that a social democracy is a better form of government than the representative republic which we now have. It may be, perhaps, that under the institutions of a socialistic democracy mankind would be happier, opportunity more free, property more equally distributed, and the satisfaction of man's wants more easily accomplished than now. All these things may be; but if a socialistic democracy is to be substituted for a representative republic, please

do not overlook the fact that it can only be so substituted by revolution. There must first be a revolution in our fundamental political beliefs; there must first be a revolution in our accustomed forms of political action; there must first be a revolution in our point of view, in our ambitions, and in our aspirations.

What are the charges that these revolutionists bring against the representative republic? We are told in the first place that the representative republic fails really and readily to reflect public opinion; that these representative institutions easily become the prey of the self-seeker, of the special interest, of the wirepuller, of the schemer, of the man who would use the public for his own personal advancement or enrichment; and that, therefore, they must be uprooted, overturned, and destroyed. We are told, in other words, that after not only 125 years of our own experience, but after 500 years of the experience of the Anglo-Saxon peoples, these representative institutions have failed, and that in the name of progress we must pass on to a direct democracy. We are told that we should begin by so shackling representative institutions that they must respond at once, mechanically, and with precision to the expressed wish or the expressed emotions of a majority of the voting population at any given instant, regardless of the fundamental constitutional guarantees of civil and political liberty. We are told that if we do this we shall restore government to a purely democratic form, that we shall make it responsive to the public will and to public opinion, and that every legitimate public and private interest will thereby be promoted. Surely this is an ambitious program.

Before we give our assent to it, however, suppose we examine for a moment the point of view and the contentions of those who are the mouthpieces of this revolutionary movement. We are justified in asking in the first place whether the attempt to substitute a direct democracy for a representative republic is progressive or reactionary. It is the history of all evolutionary processes that for particular purposes special organs are developed; for particular activities special instrumentalities are produced; and in developing any truly forward movement we proceed from the simple to the complex. In organic evolution the process is one away from the gelatinous and formless mass of the lower organisms to the exceedingly complex structure of the higher mammals. Obviously, then, it is at an earlier stage of evolution when one organism or instrumentality performs all functions, when one organism or instrumentality carries on government in all its forms, as well as those economic activities which result in providing clothing, shelter, and food. As we develop, however, and as we progress, we differentiate; we throw out feelers, as it were; we develop special organisms and instrumentalities, social as well as individual; and these divide among themselves the economic, industrial, and the governmental functions of the social unit. In this way we get a division of labor; in this way we get a specialization of function. A really progressive movement, therefore, is a movement toward differentiation, toward complexity, toward specialization of structure and function. The movement toward the perfecting of representative government is progressive; a movement away from representative government, a movement that would shackle and limit it, and that would appeal from representative institutions to direct democracy, is reactionary.

It may be said of the amœba that it walks on its stomach and digests with its legs, because it digests with what it walks with, and it walks with what it digests with. As yet there has been no differentiation of structure or function. But the amœba, with its very simple structure, is certainly not in advance of the mammal with its highly organized structure, its differentiation of function, and its many complicated activities. The movement to substitute direct democracy for representative government is a movement back from the age of the mammal to the age of the amœba. Such a movement may have merits of its own, but they can not be the merits which we attach to genuine progress. It would be just as appropriate to organize a movement, in the name of a progressive democracy, to cut our own clothes and to make our own shoes, when tailors and shoemakers are unsatisfactory, as to assume for the people as a whole the political duties which belong to representative bodies of officials, because these do not in every case do just what we should like. To take a backward step from specialization of structure and of function must not be defended as progressive; it is as reactionary as anything in the whole field of social evolution can possibly be. It is to return from the age of the mammal to the age of the amœba. Of course it is conceivable that such a movement backward is desirable; but if so, let us at least call it by its right name.

We began in this country to break down the safeguards and to weaken the fundamental principles of representative institutions some years ago, and in two different ways. We began to break them down when in many of our State constitutions, indeed in nearly all of them, we departed from the sound principles of constitution making, and filled these important documents full of what really should have been statutory legislation.

The strength and vitality of the Constitution of the United States are found in the fact that it expresses in a few words general principles which are susceptible of interpretation and of adaptation to different needs and conditions. It is for this reason, and for this reason alone, that the Constitution has been maintained and sustained, substantially without change so far as governmental structure is concerned, for a century and a quarter of most unexpected and unimagined developments. A written constitution is a device to protect man's sober and mature political judgment from his fleeting political passions and prejudices. The moment that you write into fundamental law a definite and precise statement of momentary political feeling in regard to some matter of governmental detail, that moment you have broken down the distinction which should exist between a constitution and a statute. A constitution should contain only those guaranties of civil and political liberty which underlie our whole organized society, and also make carefully drawn grants of power to legislative, executive, and judicial officers, as well as those major political determinations that persist, and are persisted in, through changes of party and of political creed. Of course, no constitution is permanent and unamendable, for even fundamental principles take on new aspects with changes of circumstance. Nevertheless, if our American Government is to endure, we must acknowledge and maintain the broad distinction which exists between the making of a constitution and the enactment of a statute.

In many of our States, particularly in those which have been organized in recent years, the so-called constitutions are an odd and curious medley of genuine constitutional principles and a host of statutes. It is not proper to include in a State constitution provision for the specific location of a State university; it is not proper to include in a State constitution the amount of compensation to be paid annually to the State auditor; it is not proper to include in a State constitution any one of the hundreds of merely incidental details of government that it is now fashionable to put upon the same plane with vitally important expressions of fundamental political principle.

The results of this confusion between a constitution and a statute are most unhappy. If, for example, it is desired to change the location of a State university, or to increase the salary of the State auditor, the constitution must be amended. If it can be so easily amended in one particular, why not in all others? At that moment the fundamental political guaranties have lost their sacredness and are reduced to the same plane of mere expediency as the location of the State university, and the amount of the auditor's salary.

We departed and we departed widely and far in this country from the sound principles of constitution making when, at first under the influence of the movement of 1848 in Europe and later under the influence of the various compromises and personal ambitions which entered into the making of some of the newer States, we began to turn the fundamental law of our various Commonwealths into a huge collection of statutory details. In so doing we have confused the public understanding of what a constitution really is, and we have opened the door to every form of experimentation with our fundamental principles on the same basis as perfectly proper experimentation with the merest details of our whole legislative and political activity.

Then, in the second place, we began the destruction of the fundamental principles of representative government in this country when, under the lash of party, we reduced the representative to a mere delegate; when we began, as is now quite commonly the case, to instruct a representative as to what he is to do when elected; when we began to pledge him in advance of his election that, if chosen, he will do certain things and oppose others—in other words, when we reduced the representative from the high, splendid, and dignified status of a real representative chosen by his constituency to give it his experience, his brains, his conscience, and his best service, and made him a mere registering machine for the opinion of the moment, whatever it might happen to be.

On this point there is a classic expression which every student of government knows and knows well. It is to be found in the address made by Edmund Burke to the electors at Bristol, in which he expresses in words that are never to be forgotten the real duty of a representative to those who have chosen him. Let me read what Burke said:

It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinions high respect; their business unremitting attention; but his unbiassed opinion, his mature judgment, his enlightened conscience he ought not

to sacrifice to you, to any man, or to any set of men living. Your representative owes you not his industry only but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion. You choose a representative indeed, but when he is chosen he is not a member of Bristol, but a member of Parliament.

We may say, substantially in Burke's phrase, that when we choose a Member of the House of Representatives he is not a Member of the first district of New York or of Pennsylvania or of Ohio or of Missouri, but he is a Member of the Congress of the United States.

But we are told that this form of democracy is not satisfactory; it is not possible with these processes and on these principles to accomplish things that some people want to have accomplished. We find, it is said, that our Representatives are getting out of our control; they do not do what we tell them. Of course, they come back after two years or four years and submit themselves to their constituents for judgment, but think of the mischief they can do in these two years or these four years which can not be undone speedily, if at all! Therefore we are told we must change our form of government and put the entire democracy in direct control of every governmental process.

It is not necessary for those of us who believe in a representative republic to say that it has no shortcomings. It is not necessary for us to take up the position that everything goes on in a way which is beyond criticism. We need not do that. We must look the facts in the face. We should admit the limitations of ourselves and of other human beings; we know the deficiencies and defects that constantly present themselves in our governmental administration, whether National, State, or municipal. But suppose we ask ourselves this question: Need we destroy fundamental principles to correct temporary infelicities? Need we pull up our institutions by the roots because they do not grow quite fast enough to please us? These are the questions which the American people have got to answer, and which many of them are to-day ready to answer by saying: "Let us destroy our fundamental principles; let us pull up our institutions by the roots in order to see why they do not grow faster."

The proposition to substitute a direct democracy for a representative republic has some features that are serious and some that are amusing. We are told, for instance, to look at the town meeting and see what a splendid institution the town meeting has been in New England. Imagine a town meeting in Chicago! Imagine bringing together on the third Tuesday in March, in one corner of the prairies of Illinois, the entire voting population of Chicago in order to submit to them the questions which are submitted to the town meetings of the sparsely settled hill-towns of New England! Is it not ridiculous? Of course. Why is it ridiculous? Because it is an endeavor to apply a principle sound in itself under circumstances where it can not possibly work. It is an attempt to arrive by a purely logical process at a political rule of action without taking into account the facts and considerations of a particular case. The moment you ask yourself why it is ridiculous to govern Chicago by a town meeting, and find that it is, that moment you ought to be ready to understand why representative institutions grew up among English-speaking peoples and why they have continued to exist to the present day. But the objector says: "I grant that you can not

have a town meeting in the case of Chicago; that must be given up as impracticable; but there is something else that we can do. We can retain our representative institutions, but so limit them and so shackle their operations that we retain for ourselves the right to initiate legislation and the right to veto any legislation that our representatives may see fit to pass."

Examine for a moment these suggestions in order to see what they really mean and to what they really lead. In the first place, please do not overlook the exceedingly important fact that all those who are uniting to urge upon us this transformation of our form of government invariably propose to put these instrumentalities of a direct democracy into operation upon the initiative of a very small fraction of the electorate. What a glorious time it would be for the perpetual disturbers of political peace! It is proposed, for instance, that 5 per cent or 8 per cent of the electorate shall be sufficient to initiate legislation and to demand a poll of the people thereon. Legislation so initiated can not be amended or perfected in form. It can not be examined in committee, its sponsors can not be cross-questioned; it must be taken or left precisely as they project it into the political arena. Is there any community in the world where 5 per cent of the adult males can not be gotten to sign a petition for anything? Is there any community in the world where if 5 per cent of the adult males had petitioned for something that had been denied, they could not be gotten to petition for it again without delay? Would not life under this system become one long series of elections? Should we not be chasing each other to the polls once a week to pass upon some new legislative proposal and not always one presented by the wisest and most thoughtful of our citizens? What would be the effect of all this on the members of our legislative bodies, National and State? Are the best men in your community going to accept nomination and election to a legislative body any one of whose acts, however carefully formulated, may be brought up for review and possibly overturned on the initiative of 5 per cent of the voting population? We complain that we do not always get the men we would most like to see in the State and National legislatures. Should we get a better class of representatives, or worse, if we took away their sense of responsibility, took away their dignity and authority, and set ourselves up on every side to duplicate or possibly to overturn their every act? There is only one possible answer to that question. We should degrade our legislative bodies and reduce them to intellectual, moral, and political impotence.

Of all the proposals that have been brought forward in the name of direct democracy, the initiative is the most preposterous, and the most vicious. It is far more objectionable than the referendum, which is ordinarily bracketed with it, because it is intended to project a legislative proposal upon the community at the instigation of a very small number of people, which proposal must then be passed upon without amendment; without any opportunity to perfect it, even in phraseology; without any chance to receive and act upon suggestions for its extension, its narrowing, or its betterment; and without opportunity for any one of the processes of discussion and revision which are offered to-day by the operation of the rules of procedure which control legislative bodies and their committees. Under the action of the initiative, a community is called upon to say yes or no

to a proposal framed by 5 per cent of anybody. I submit that this is very like having to answer the question, "Have you left off beating your grandmother?" If you answer "yes," you embarrass yourself; if you answer "no," you embarrass yourself still more.

All that can possibly be accomplished by the initiative is to strike the heaviest possible blow at representative institutions, and to remove the last inducement to bring able, reflective, and intelligent men to accept service in a legislative body. The initiative will result in registering in more or less rapid succession the consecutive emotions of a small proportion of the electorate; because if you will examine the records where the initiative has been introduced, you will see that whatever action has been taken has been so taken by the vote of a small minority of the voting population. Consideration by chosen representatives disappears, the perfecting of a measure through committee consideration and public debate is made impossible; some preconceived scheme for which there is a sentiment among a small portion of the community must be accepted or rejected in toto.

This is not a policy which makes for stable and consistent government. This is not a progressive policy. This is not a policy which will develop and strengthen the institutions that we have inherited and that we are seeking to apply to new conditions. This is not a policy which will bring support to the fundamental guarantees of civil and political liberty upon which our National Government rests.

But it may be urged, surely those fundamental guarantees are not questioned or doubted. I beg to assure you that every single one of them is questioned and doubted in this country, and questioned and doubted by no inconsiderable body of opinion, some of it not lacking in intelligence, very energetically represented in different parts of the United States. We may close our eyes to all this if we like. We may with our consummate American hopefulness and optimism say that it will turn out all right; perhaps it will; but the fact remains that there are some of us who believe that the fundamental guarantees which underlie our whole National Government and our national life can not be attacked, can not be denied, can not be made light of, without serious danger to our entire political fabric.

Should not the majority rule? If the majority wish to sweep away all the fundamental guaranties, should they not be permitted to do so? Is that not one of the risks that democratic government must run? Those who believe that we learn nothing in this world from human experience may, if they choose, answer those questions in the affirmative. Those who believe that nothing in this world is fixed or definite or a matter of principle, may answer those questions in the affirmative; but those who believe that we do move forward through the centuries by building upon and using the experience of those who have gone before; those who believe that out of the thousand or two thousand years of political life and activity of the western world there have come some principles which are certain and which abide, and some political guaranties that are vital to human welfare, they will answer those questions, no; a thousand times, no! Those who believe that we must build our institutions upon foundations that are not subject to continual revision and reconstruction will answer, no; a thousand times no! We point to the fundamental guaranties of

the British and American Constitutions, and say that those are beyond the legitimate reach of any majority because they are established in the fundamental laws of human nature upon which all government and civilization and progress rest. Sweep them away, if you will; a majority may have that power, but with the power does not go the right. If they are swept away, all government and all liberty go with them, and anarchy, in which might alone makes right and power alone gives place, will rise upon their ruins.

There is nothing new about all this. Aristotle pointed out that democracy has many points of resemblance with tyranny. It was he who first told us how a democracy as well as a tyranny may become a despotism. It was he who first pointed out to us the likeness that there is between the demagogue in a democracy and the court favorite in a tyranny. If democracy is not to become a tyranny it must recognize and build upon those constitutional limitations and guaranties that are so precious to the individual citizen and that protect him in his life, his liberty, and his property. It is not in the power of any majority to sweep these away without sweeping away with them the whole fabric of the state in violent and destructive revolution. The other day, in turning over the pages of John C. Calhoun, I came upon a most extraordinary sentence which bears upon this very point. Almost a century ago Calhoun wrote these words:

The government of the uncontrolled numerical majority is but the absolute and despotic form of popular government, just as the uncontrolled will of one man is monarchy.

Control there must always be if there is to be liberty. That control is law, built in turn upon those limitations and guaranties which are our Constitution. It is just as easy for a majority to become a despot as for a monarch to become a tyrant; even a tyrant may be benevolent; even a democratic despotism may be malevolent.

We are now invited to treat these constitutional limitations and guaranties just as we treat mere statutory legislation. They are to be revised, to be amended, to be overturned, in order that the sacred will of a temporary majority may be everywhere and always enacted into constitutional law. To walk in these paths means the suppression of the individual as the unit in the scheme of liberty. It means the extinction of liberty as we have known it. It means what I call a socialistic democracy, because it means that the majority will take direct and responsible control of your life, your liberty, and your property. All that constitutes individuality will have gone by the board; it will have been poured into the great boiling pot of the social whole, there to be reduced to a single incoherent mass to be exploited, as the will of this or that majority may from moment to moment determine and advise. This may be progress, but it is certainly revolution.

Then there is another device urged upon us in the name of progress, known as the referendum. This differs widely from initiative, and has no possible relationship to it. It is in effect a popular veto on the acts of the legislature. Our American institutions provide almost without exception for an executive veto. The executive veto exists for the purpose not necessarily of permanently defeating legislation, but to compel its reconsideration, its public discussion, and its restudy

by the people themselves, by the press, and by the people's representatives. It is a wise and appropriate institution. Experience has shown that while it is not often used, it may serve, and does serve, as a check upon hasty and ill-considered legislative action.

The referendum, however, is quite different from the executive veto, and, in the form in which it is now urged, is like the initiative in that it tends to destroy the responsibility of the legislator and to make the legislature itself a very subordinate and timid body. If any community or State insists upon subjecting the ordinary work of its legislature to a general referendum, it insists at the same time that it shall be served in its legislature by second-rate and third-rate men, and that its representatives shall be turned into delegates. Edmund Burke would find no place in such a scheme of politics as that. Once more I say, to introduce the referendum as a check upon the legislature may be progress, but I insist that if it is progress it is also revolution. It is revolution because it strips away more and more elements of strength, independence, and power from the legislature. The legislature exists in order that different views may be studied and compared, in order that acts may be considered and perfected by hearing all parties and all interests, in order that amendment and discussion may be possible. All this is stripped away if there is behind each legislator's chair a controlling force which says, "If you do so and so we shall upset it by a general vote, as we, your creators, have a right to do."

Lord Acton in one of his essays, I think it is the one on the history of liberty, pointed out some years ago that the referendum, whatever may be said in its favor theoretically, is obnoxious to all believers in representative institutions, because it contemplates decision without discussion. Of course, there is discussion in one sense, but there is no discussion which could in any way operate to perfect a pending proposal; there is no discussion possible that can lead to the amendment or improvement of a proposal. The only discussion that can possibly take place is that which will confirm men in their attitude toward the proposition which is pending.

Of course, we are in this country accustomed to a certain limited use of the principle of referendum. State constitutions, as a rule, and State amendments, almost uniformly, are passed upon by the people as a whole. The same is true often in the case of large financial undertakings or bond issues. If the legislature itself takes and may take the initiative in submitting a question to a referendum vote, the damage is in so far limited. To force a referendum vote upon the legislature by constitutional provision would be, however, to inflict the maximum amount of damage upon the representative principle. As a matter of fact, no legislature should seek to shirk responsibility; that is the part of weak and timid men. More than half a century ago the Court of Appeals of the State of New York, in the well-known case of *Barto v. Himrod*, laid down the true doctrine on this subject in no uncertain terms. The court used this language:

The representatives of the people are the lawmakers, and they are responsible to their constituents for their conduct in that capacity. By following the directions of the constitution, each member has an opportunity of proposing amendments. The general policy of the law, as well as the fitness of its details, is open to discussion. The popular feeling is expressed through their representatives; and the latter are enlightened and influenced more or less by the discussions of the public press.

A complicated system can only be perfected by a body composed of a limited number, with power to make amendments and to enjoy the benefit of free discussion and consultation. This can never be accomplished with reference to such a system when submitted to a vote of the people. They must take the system proposed or nothing. They can adopt no amendments, however obvious may be their necessity. * * * All the safeguards which the constitution has provided are broken down, and the members of the legislature are allowed to evade the responsibility which belongs to their office. * * * If this mode of legislation is permitted and becomes general, it will soon bring to a close the whole system of representative government which has been so justly our pride. The legislature will become an irresponsible cabal, too timid to assume the responsibility of lawgivers, and with just wisdom enough to devise subtle schemes of imposture to mislead the people. All the checks against improvident legislation will be swept away, and the character of the constitution will be radically changed.

Do you fully realize with what levity we are now passing upon this important issue of the referendum in this country? Do you realize in what complexity important governmental proposals are being submitted to thousands and tens of thousands of voters, and with what light-hearted frivolity they are being passed upon? A few weeks ago the great State of California, one of the most intelligent and wealthiest States in the Union, completely revolutionized its form of government by passing at one and the same election 23 amendments to its constitution by enormous majorities. It has, however, escaped attention that the total vote cast for and against these revolutionary proposals was about 60 per cent of the vote cast for President in 1908 or that cast for governor in 1910. Apparently the number of people in California who are interested in their form of government are only about six-tenths of the number that were interested in who should be President of the United States or who should be governor of the State. Of the 23 amendments that were presented to the people of California on one and the same ballot, some half dozen were genuine constitutional amendments; the rest were almost without exception matters of legislation, some of them very trifling.

If you have not already seen it, I want to show you the document that was sent by the secretary of the State of California to every registered voter in the State. [Here the speaker exhibited a large sheet closely printed on both sides.] You will observe that the State officials who got up this amazing document did not expect it to be read by anybody. It is solidly printed in small type on both sides of one sheet, and there is the trifling little matter of a supplement with three or four amendments on a separate sheet. Here are printed the questions that were submitted not to the Court of Appeals of California, not to the professors of political science in the State university, not even to the legislature of the State, but to the voters! I submit that the whole proceeding is ridiculous. Look at these pieces of paper. In 1908, 386,000 voted for President in California; in 1910, 385,000 voted for governor. The highest vote cast on October 10 last for any of these amendments was cast in regard to the amendment relating to women's suffrage. The total vote on that amendment was 246,000; 140,000 fewer than were polled three years before for President and 139,000 fewer than were polled two years before for governor. Women's suffrage was carried in California by an affirmative vote of 125,000, or 2,000 less than Mr. Bryan received in 1908, when he lost the State by nearly 90,000 majority.

Is it not obvious, then, that we are changing our form of government in the United States by a minority vote? Here is an amendment which doubles the number of voters in the State by removing the limitation of sex; here is action which establishes the initiative, the referendum, the recall, including the recall of judges; and every one of them is an amendment to the constitution of a great, rich, and populous State made by a small minority of the voting population. That, I submit, is a political factor and a political portent of far-reaching significance. I know the answer. It is said that the remainder of the voting population might have voted had it wished to do so. True; but why then should not this great nonvoting mass be counted in opposition to revolutionary changes in government rather than in favor of them, or ignored entirely? What principle of political science or of equity is it that puts the institutions of a whole State at the mercy, not even of a temporary majority, but of a small minority of the people?

This election in California wrote into the constitution of the State what is known as the recall, including the recall of members of the judiciary. The recall of executive and legislative officials is not a violation of the fundamental principles of representative government as are the initiative and referendum. It is simply a stupid and a foolish device of restless and meddling minds. The recall will, however, assist the initiative and the referendum in diminishing the consistency, the intelligence, and the disinterestedness of government, because it will help to keep high minded and independent men from accepting nomination and election to public office. It will help to develop a class of timorous and unprincipled office seekers and office-holders who will be able to change what they call their principles as quickly as they change their clothes, if a few votes are to be gained thereby.

The principle of the recall when applied to the judiciary, however, is much more than a piece of stupid folly. It is an outrage of the first magnitude! It is said: "Are not the judges the servants of the people? Do not the people choose them directly or indirectly, and should not the people be able to terminate their services at will?" To these questions I answer flatly, No! The judges stand in a wholly different relation to the people from executive and legislative officials. The judges are primarily the servants not of the people, but of the law. It is their duty to interpret the law as it is, and to hold the law-making bodies to their constitutional limitations, not to express their own personal opinions on matters of public policy. It is true that the people make the law, but they do not make it all at once. Our system of common law has come down to us from ancient days, slowly broadening from precedent to precedent. It is not a dead or a fixed thing. It is capable of movement, of life, and of adaptation to changing conditions. But it must be changed and adapted by reasonable and legal means and methods and not by shouting or by tumult. It was no less a person than Daniel Webster who said "that our American mode of government does not draw any power from tumultuous assemblages." This is true whether the tumultuous assemblage shouts and cries aloud on a sand lot, or whether the tumultuous assemblage goes through the form of voting at the polls.

Moreover, we know something about what happens when judges are dependent upon the power that creates them. The history of England tells a plain story of the tyranny and injustice which grow out of a judiciary that is made representative not of the law but of the Crown. In the same way, if the recall of the judiciary should be established in this country, it would not be long before our history would tell the story of the tyranny and injustice that usually follow upon a judiciary made immediately dependent upon a voting population. If great causes, civil and criminal, are to be decided in accordance with established principles of law and equity and upon carefully tested evidence, they must be decided under the guidance of a fearless and independent judiciary. To make the actions or the words of a judge the subject matter of popular revision at the polls with a view to displacing a judicial officer because some act or word is not at the moment popular, is the most monstrous perversion of republican institutions and of the principles of true democracy that has yet been proposed anywhere or by anybody.

There need be no doubt or mistake about this, for the advocates of the recall of the judiciary mince no words. I find in the *Appeal to Reason*, edited by Eugene V. Debs, who is hardly the safest and the sanest adviser that the American people have had, these words in relation to the California election:

The fight at the polls this fall will center around the adoption of the initiative, referendum, and recall amendments to the constitution. Under the provisions of the recall amendment the judges of the Supreme Court of California can be retired. These are men who will decide the fate of the kidnapped workers! Don't you see what it means, comrades, to have in the hands of an intelligent, militant working class the political power to recall the present capitalist judges and put on the bench our own men? Was there ever such an opportunity for effective work? No; not since socialism first raised its crimson banner on the shores of Morgan's country! The election for governor and State officers of California does not occur till 1914. But with the recall at our command we can put our own men in office without waiting for a regular election!

It will be observed that the courts of California had before them a case about which Mr. Debs had seemingly made up his mind. He had not heard the evidence, because the case has not yet come to trial, but it is perfectly obvious that he and his friends are ready to return a verdict. Moreover, they are ready to recall—that is, to displace—before the expiry of his term any judge who differs with them. Can anyone outside of Bedlam support a public policy such as this?

To make it possible to displace public officials before the expiry of the term for which they are chosen is to deprive them of individual responsibility and dignity and to make them mere tools of passing opinion. It is not difficult to see what would have happened had the principle of the recall prevailed throughout American history. We Americans are singularly liable to communicable political diseases, and one wave of emotion after another sweeps over us with amazing celerity. George Washington would have been recalled at the time of the Genet episode; James Madison might have been recalled during the agitation which led to the War of 1812 with England; Abraham Lincoln would almost certainly have been recalled in the dark days of 1862 and 1863; Grover Cleveland would have been recalled by overwhelming vote in the summer of 1893, when he was making his fight for a sound financial policy and sys-

tem. Yet, when we get far enough away from the public deeds of these strong men we see that the particular things which at the time most excited the animosity and roused the passions of large numbers of people were the very things that made them immortal in American history. It is not because they defied public opinion that they were great; it is because they understood real public opinion better than did the untamed passion of the moment. They saw far more clearly than did the crowd what was really at stake, and it was their responsibility to reflect, to plan, and to act so that the honor and highest interests of the Nation would be preserved. To-day these men are with the highest on the list of our American heroes; yet every one of them might have been dashed from his high place if the passions of the moment could have gotten at them when those passions were at their height.

Mr. President, neither is there anything new about all this. It is a French proverb which says, "Everything changes but everything is always the same." In 1890 there was discovered the lost work by the philosopher Aristotle on the Constitution of Athens. The reading of that work tells us much more than we previously knew of the working of the Athenian constitution. We can now see more clearly than ever before why it was that Athens with all its glory went to pieces. The Athenians not only appointed their generals by popular vote, but they voted every month or two as to whether they would recall them. They recalled Pericles; they recalled Laches; they recalled Thucydides; they recalled Alcibiades. A general would be sent out to take a fort or to reduce a city. He did not succeed. As soon as the news reached home he was recalled. A general was sent out to land an army in Sicily. Before he reached there he was recalled. This sort of thing has all been tried. It was tried at Athens to the full, and the Athenian democracy is now an interesting and instructive memory. Why must we Americans always be children? Why must we always seek to learn over again at our own cost the lessons of experience which the world's history is ready to teach us for the asking?

Mr. President, why should we not be permitted to perfect our form of government instead of changing it? Why should we not move forward in genuine progress on the lines of the development of the last 500 years? Why must we turn back and begin all over again to climb the painful hill of difficulty which leads to representative government and to liberty? It is to me a continual source of amazement that those who urge these revolutionary changes upon us do not seem to know anything of the recorded history of government and of human society. They do not appear to know that the instruments which they offer us as new and bright and helpful have long since been discarded as old and rusty and outworn. Let them open their minds and study history before attempting to guide the political development of the American people.

"I have no time now to do more than indicate where I believe the path of true political progress for our democracy leads. It leads, in my judgment, not to more frequent elections but to fewer elections; it leads not to more elective officers, but to fewer; it leads not to more direct popular interference with representative institutions, but to less; it leads to a political practice in which a few important

officers are chosen for relatively long terms of service, given much power and responsibility, and then are held to strict accountability therefor; it leads not to more legislation, but to infinitely less; it leads to fixing public opinion on questions of vital principle and not to dissipating it among a thousand matters of petty administrative detail; it leads to those acts and policies that will increase the desire and interest of public-spirited men to hold office, and not drive them away from it as with a scourge.

I wish that it might be possible for us to be lifted up to a distant planet and to look down on this earth of ours and to witness its history move forward as in a cinematograph, so that we might in a few moments view it from its beginnings to our own day. We should see the early civilized peoples with their institutions and their magnificent buildings ruling the plains of Iran; we should see the fertile valley of the Nile settled and built up and the mysterious pyramids and sphinxes and temples rise like magic at the edge of the most arid of deserts; we should see the grandeur that was Greece, and the glory that was Rome; we should see the building up of the great empire of Charlemagne; we should watch it fall to pieces; we should observe the moving masses of people from the north and east going to the south and west, and also the dark stream of Arab migration flowing along the south shore of the Mediterranean and across the narrow straits into Spain; we should see the modern nations of Europe take their beginning; we should see the heavy hand of absolutism laid upon them, each and all; and then our eyes would be attracted by those two bright spots of which I have already spoken. England and Holland. From them would be seen coming bright beams of light, inspiration, and guidance, strong enough to reach across the Atlantic and to help the earliest American settlers to lay the foundations of the civil Government which is ours. We should see the fundamental principles of this polity growing stronger and more powerful, adapting themselves to varying needs and economic conditions, building up a nation that stretches from ocean to ocean, and from frost to continual sunshine, and which offers a haven and a resting place to men of every race and every blood, who believe in liberty and who seek it. I wish that we could see all that. I wish that we could see the history of political progress as it is recorded in the institutions of civilized men, and seeing it, then put to the American people the question: Why should we change our form of Government?

When that vision is revealed to the intelligent American, when his intelligence and conscience are really reached, he will say to these revolutionists who are inviting us to the happy days of the socialistic democracy, No! He will say to the defenders of a representative republic, Let us not change our form of government; let us develop, let us perfect it, for in so doing we are only responding to the noble appeal of Abraham Lincoln, so to dedicate ourselves to the cause of liberty that "government of the people, by the people, and for the people shall not perish from the earth."



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